



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-2900 FAX (603) 271-2456



June 28, 2002

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Warren Wilbur
d/b/a C&W Excavating
19 Griffin Street
Keene, NH 03431

Re: Administrative Order No. WMD 02-18

Dear Mr. Wilbur:

Enclosed is Administrative Order No. WMD 02-18 issued this date to you as a result of an inspection conducted on April 25, 2002.

Should you have any questions regarding this order, please contact George Carrigan or me at 271-3899.

Sincerely,

Kenneth W. Marschner, Administrator
Waste Management Programs
Department of Environmental Services

CERTIFIED MAIL/ RRR: 7000 1670 0000 0584 4219

cc: DB/FILE
Gretchen Rule, DES Legal Unit
Public Information Officer, DES PIC Office
Jennifer Patterson, Sr. Assistant Attorney General
Town of Swanzey
Cleveland Prince, Jr. and Jodie Prince, Property Owners



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Warren Wilbur
d/b/a C&W Excavating
19 Giffin Street
Keene, NH 03431

**ADMINISTRATIVE ORDER
No. WMD 02-18**

June 28, 2002

Re: 244 Winch Hill Road, Swanzey, NH

A. INTRODUCTION

This Administrative Order is issued by the Department of Environmental Services, Waste Management Division to Warren Wilbur d/b/a C&W Excavating pursuant to RSA 149-M:15, I. This Administrative Order is effective upon issuance.

B. PARTIES

1. The Department of Environmental Services, Waste Management Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 6 Hazen Drive, Concord, NH 03301.
2. Warren Wilbur is an individual doing business as C&W Excavating and having a mailing address of 19 Giffin Street, Keene, NH 03431.

C. STATEMENTS OF FACTS AND LAW

1. RSA 149-M authorizes DES to regulate the management of solid waste in the State of New Hampshire. RSA 149-M:7 authorizes the Commissioner of DES to adopt rules to implement solid waste management standards. Pursuant to this authority, the Commissioner has adopted Env-Wm 100-300 and Env-Wm 2100-3700 ("Solid Waste Rules").
2. Cleveland D. Prince, Jr. and Jodie E. Prince are the owners of land located at 244 Winch Hill Road, Swanzey, NH, more particularly described in a deed recorded in the Cheshire County Registry of Deeds at Book 1582, Page 868, and identified on Swanzey Tax Map 65, as Lot 1-1 (the "Site").
3. On April 4, 2002, DES personnel received a complaint alleging that solid waste was being dumped at the Site and used as fill.
4. On April 25, 2002, DES personnel investigated the allegations of illegal disposal of solid waste at the Site.
5. RSA 149-M:4, XXII defines "solid waste" as "any matter consisting of putrescible material, refuse, residue from an air pollution control facility, and other discarded or abandoned material."

6. RSA 149-M:4, XXI defines “refuse” in part, as “any waste product ... which is composed wholly or partly of such materials as ... brick, plaster or other waste resulting from the demolition, alteration, or construction of buildings or structures; or accumulated waste material, cans, containers, tires, junk, or other such substances which may become a nuisance.”

7. Env-Wm 102.42 defines “construction and demolition debris” in part, as “non-putrescible waste building materials and rubble which is solid waste resulting from the construction, remodeling, repair or demolition of structures or roads. The term includes but is not limited to, bricks, concrete and other masonry materials, wood, wall coverings, plaster, dry wall, plumbing, fixtures, non-asbestos insulation or roofing shingles, asphaltic pavement, glass, plastics that are not sealed in a manner that conceals other wastes and electrical wiring and components, incidental to any of the above and containing no hazardous liquid or metals. The term does not include asbestos waste, garbage, corrugated container board, electrical fixtures containing hazardous liquids such as fluorescent light ballasts or transformers, furniture, appliances, tires, drums and containers, and fuel tanks.”

8. During the April 25 inspection, DES personnel observed approximately 140 cubic yards of total fill, including soil, wood, insulation, vinyl siding, wire, and bricks at the Site. The location of the waste indicates that it is being used to expand the vehicle parking area at the Site.

9. The wood, insulation, vinyl siding, wire, and bricks observed by DES personnel at the Site are solid waste as defined by RSA 149-M:4, XXII.

10. RSA 149-M:4, IX defines a “[solid waste] facility” as “a location, system, or physical structure for the collection, separation, storage, transfer, processing, treatment or disposal of solid waste.”

11 The Site constitutes a “solid waste facility” as defined by RSA 149-M:4, IX.

12. Env-Wm 102.116 defines “owner” as “a person who owns a facility or part of a [solid waste] facility.”

13. Cleveland Prince, Jr. and Jodie Prince are the owners of a solid waste facility

14. RSA 149-M:9, I states that “No person shall construct, operate or initiate closure of a public or private facility without first obtaining a permit from [DES].”

15. A review of DES files show that neither Cleveland Prince, Jr. nor Jodie Prince has applied for or holds a permit to operate a solid waste facility at any New Hampshire location.

16. RSA 149-M:9, II states that “It shall be unlawful to transport solid waste to, or dispose of solid waste at, any facility other than an approved [solid waste] facility.”

17. On April 30, 2002, DES personnel met with Jodie Prince and Cleveland Prince, Sr. to discuss the solid waste issues at the Site. Ms. Prince informed DES personnel that the solid waste observed at the Site had been brought to the Site by Warren Wilbur. Mr. and Ms. Prince were informed by DES personnel that the solid waste would need to be removed and disposed of at a permitted solid waste facility.

18. On May 1, 2002, Cleveland Prince, Jr. contacted DES personnel. During the telephone conversation, Mr. Prince informed DES personnel that he had accepted money from Mr. Wilbur to have the solid waste brought to the Site.

19. On May 1, 2002, DES personnel contacted Mr. Wilbur to discuss the solid waste issues at the Site. Mr. Wilbur informed DES personnel that he had paid Mr. Prince to burn the solid waste at the Site.

20. On May 2, 2002, DES personnel conducted a follow-up inspection of the Site. DES personnel met with Cleveland Prince, Sr. and Warren Wilbur d/b/a C&W Excavating. Mr. Wilbur admitted to DES personnel that he had brought approximately 60 plus cubic yards of solid waste to the Site. DES personnel explained to Mr. Prince and Mr. Wilbur that the solid waste at the Site would need to be removed to a permitted solid waste facility.

21. Warren Wilbur d/b/a C&W Excavating transported solid waste to and disposed of solid waste at an unpermitted solid waste facility.

D. DETERMINATION OF VIOLATIONS

1. Warren Wilbur d/b/a C&W Excavating has violated RSA 149-M:9, II by transporting solid waste to an unpermitted solid waste facility.

2. Warren Wilbur d/b/a C&W Excavating has violated RSA 49-M:9, II by disposing of solid waste at an unpermitted solid waste facility.

E. ORDER

Based on the above findings, DES hereby orders Warren Wilbur d/b/a C&W Excavating as follows:

1 **Immediately** cease transporting solid waste to this or any other unpermitted facility.

2. **Immediately** cease disposing of solid waste at this or any other unpermitted facility.

3. **Within 90 days** the date of this Order, remove all solid waste transported to the Site by Warren Wilbur d/b/a C&W Excavating to a permitted solid waste facility. DES suggests coordinating efforts with Cleveland Prince, Jr. and Jodie Prince, the owners of the Site.

4. Submit one written status report to DES **within 100 days** certifying that corrective measures have been implemented and compliance achieved. Include in the report supporting documentation describing those measures taken to achieve compliance, copies of any written plans or proceedings developed, and **copies of disposal receipts.**

5. Send correspondence, data, reports, and other submissions made in connection with this Administrative Order, **other than appeals**, to DES as follows:

George Carrigan, Waste Management Specialist
DES Waste Management Division
6 Hazen Drive
Concord, NH 03301
Fax: (603) 271-2456
e-mail: gcarrigan@des.state.nh.us

F. APPEAL

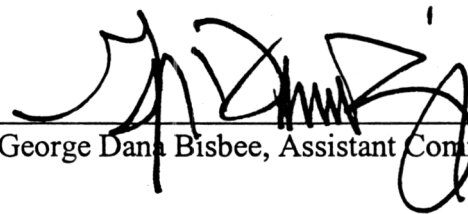
Any person aggrieved by this Order may appeal the Order to the Waste Management Council by filing an appeal that meets the requirements specified in Env-WMC 200 within 30 days of the date of this Order. Copies of the rule are available from the DES Public Information Center at (603) 271-2975 or at <http://www.des.state.nh.us/desadmin.htm>. Appealing the Order does not automatically relieve Warren Wilbur d/b/a C&W Excavating of the obligation to comply with the Order.

G. OTHER PROVISIONS

Please note that RSA 149-M provides for civil and criminal penalties and administrative fines for violations of the statute or any rule adopted by DES relative to the statute, as well as for violations of this Order. RSA 149-M:15 provides for civil forfeitures of up to \$25,000 for each day of a continuing violation, in addition to enforcement by injunctive relief. In the event that compliance is not achieved, DES may take further action against Warren Wilbur d/b/a C&W Excavating, including referring the matter to the New Hampshire Department of Justice for imposition of civil or criminal penalties. DES reserves the right to pursue administrative penalties for the violations noted above.



Philip J. O'Brien, Ph.D., Director
Waste Management Division



George Dana Bisbee, Assistant Commissioner

Certified Mail/RRR: 7000 1670 0000 0584 4219

cc File/DB
 Gretchen Rule, DES Legal Unit
 Public Information Officer, DES PIC Office
 Jennifer Patterson, Sr. Assistant Attorney General
 Town of Swanzey
 Cleveland Prince, Jr. & Jodie Prince, Property Owners